

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Max Gross	Team: Team # 3	CCRB Case #: 201004238	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/24/2010 9:00 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 75	18 Mo. SOL 9/24/2011	EO SOL 9/24/2011	
Date/Time CV Reported Tue, 03/30/2010 3:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 03/30/2010 3:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Jenica Nathaniel	19658	937167	075 PCT
2. SGT Damon Martin	04173	920558	075 PCT
3. POM Daniel Barreto	29988	939904	075 PCT
4. POM Scott Just	12018	897760	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sean Finnegan	14095	943238	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Damon Martin	Abuse: Sergeant Damon Martin authorized the stop of § 87(2)(b)	§ 87(2)(b)
B.SGT Damon Martin	Abuse: Sergeant Damon Martin searched § 87(2)(b)	§ 87(2)(b)
C.SGT Damon Martin	Abuse: Sergeant Damon Martin authorized the frisk of § 87(2)(b)	§ 87(2)(b)
D.SGT Damon Martin	Abuse: Sergeant Damon Martin refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
E.POM Daniel Barreto	Abuse: Officer Daniel Barreto refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
F.POM Scott Just	Abuse: Officer Scott Just refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
G.POF Jenica Nathaniel	Abuse: Officer Jenica Nathaniel refused to provide her name and shield number to § 87(2)(b) and Stanely § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 30, 2010, § 87(2)(b) filed this complaint on behalf of herself and her boyfriend, § 87(2)(b) online via the CCRB's website [Enc. 7A-E, 8A-B]. On March 24, 2010, at approximately 9:00pm, § 87(2)(b) was seated with § 87(2)(b) on the front stoop of § 87(2)(b) residence located at § 87(2)(b) in Brooklyn. An unmarked vehicle containing Sergeant Damon Martin, Officer Scott Just, and Officer Daniel Barreto (all from the 75th Precinct SNEU unit) pulled in front the building. Later, a marked van containing Officer Jenica Nathaniel and Officer Sean Finnegan (also from the 75th Precinct SNEU unit) was summonsed to the scene. The following allegations resulted:

- **Allegation A) Sergeant Damon Martin supervised the stop of § 87(2)(b)** Based on § 87(2)(b), § 87(2)(g)
- **Allegation B) Sergeant Damon Martin searched of § 87(2)(b)**
- **Allegation C) Sergeant Damon Martin authorized the frisk of § 87(2)(b)** Based on § 87(2)(b), § 87(2)(g)
- **Allegation D) Sergeant Damon Martin refused to provide his name and badge number to § 87(2)(b) and § 87(2)(b)**
- **Allegation E) Officer Daniel Barreto refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)**
- **Allegation F) Officer Scott Just refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)**
- **Allegation G) Officer Jenica Nathaniel refused to provide her name and shield number to § 87(2)(b) and § 87(2)(b) § 87(2)(g)**

• § 87(2)(g), § 87(4-b)

§ 87(2)(b) initially agreed to mediate this complaint. § 87(2)(b) declined to mediate the complaint but agreed to defer to § 87(2)(b) and allow the case to move forward as a mediation without his participation. However, due to a lack of adequate documentation on the 75th Precinct's roll call and an unsuccessful photographic array, the investigation was unable to identify the officers for the purposes of mediation without taking additional investigative steps that rendered the case ineligible for mediation. As such, this case was initiated as a full investigation on October 4, 2010.

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)-old black female who stands 5'7" and weighs 124 pounds. She has dark brown hair and brown eyes.

On April 8, 2010, § 87(2)(b) was interviewed at the CCRB [Enc. 9A-D, 9II-9KK]. Her statements were mostly consistent with the information disseminated on her electronic complaint report [Enc. 7A-E]. Her complaint is summarized below:

On March 24, 2010, at approximately 9:00pm, § 87(2)(b) was sitting on the front steps of § 87(2)(b) in Brooklyn. § 87(2)(b) and a tenant of the first floor of the building, § 87(2)(b) were sitting outside smoking cigarettes. The building is owned by § 87(2)(b)'s boyfriend, § 87(2)(b) who was not present at the time. The stoop has approximately four to five steps and connects the front entry of the house. It is separated from the sidewalk by a small metal gate. § 87(2)(b) stated that no one else was on the block for the entirety of the thirty minutes she was outside, a condition she acknowledged as abnormal. She did not detect the odor of marijuana or notice anything suspicious in the area that might attract the police's attention. § 87(2)(b) was wearing blue jeans and a long brown coat (open) with a grey hooded sweatshirt underneath it. § 87(2)(b) is a black female who is approximately 50 years old, and was wearing a sweat suit (color unknown – possibly grey).

After being outside for approximately 30 minutes, an unmarked vehicle (described as black or dark colored with the appearance of a livery cab), pulled up in front of the house. Three officers dressed in plainclothes identified as Sergeant Damon Martin, Officer Scott Just, and Officer Daniel Barreto (all of the 75th Precinct) emerged from the cab and approached the steps where § 87(2)(b) was seated. From the way the officers pulled up and based on their initial appearance, § 87(2)(b) immediately assumed that they were police officers. All three were dressed in plainclothes, and none of their badges were visible.

The officers approached § 87(2)(b) and immediately told her to "Come down" and asked, "What are you smoking?" By this point, § 87(2)(b) had already extinguished her cigarette, but § 87(2)(b) was still smoking her cigarette. § 87(2)(b) complied, but stated "Smoking? Do you see me smoking?" § 87(2)(b) was holding a green lighter in her hands and had a pack of Newport Cigarettes on the steps next to her. Sergeant Martin took a lead roll in the incident, and appeared to be giving directives to the other officers during the incident.

§ 87(2)(b) picked up her pack of cigarettes, placed them inside of her front hooded sweatshirt pocket, and walked down the steps. When she reached the bottom of the steps, Sergeant Martin began pulling on her coat and reaching inside of her coat pockets. Sergeant Martin reached inside § 87(2)(b)'s hooded sweatshirt pocket and removed her pack of cigarettes, before opening the box and looking inside. § 87(2)(b) had her green lighter in her hand, a pack of cigarettes (inside her hooded sweatshirt pocket), and loose money in her right front jean pocket. She did not have her cell phone on her at the time.

The officers had little interaction with § 87(2)(b) and appeared to be strictly focused on § 87(2)(b). Officer Just and Officer Barreto took out a flashlight and began shining their lights into the garbage cans and asked § 87(2)(b) "What were you smoking?" § 87(2)(b) replied, "What are you talking about what was I smoking?" and informed the officers again that she was just smoking a cigarette. The officer shined his flashlight around the steps of the house, around the area of the front gate, and onto the landing of the basement entrance to the house (there is a small staircase that goes down from the street level to the basement entrance). It was dark out at the time, but § 87(2)(b) has a light which shines over the stoop area of the house which was on at the time and illuminated the front area of the house.

Sergeant Martin continued to ask § 87(2)(b) questions, including "What's your name?" and "Do you live here?" § 87(2)(b) told the officers her name and that she does not reside at the house but her boyfriend owns the house. Sergeant Martin asked § 87(2)(b) for her identification, and she told them that it was upstairs in the house. At this point, the officers did not ask § 87(2)(b) to go up and retrieve her

identification. § 87(2)(b) overheard Sergeant Martin indicate that he wanted a second unit to come to the scene. While they were waiting for the unit to arrive, § 87(2)(b) walked back to the steps to sit down as she felt weak. The officers remained at the scene, and had not told § 87(2)(b) why she was being stopped and searched. § 87(2)(b) did not feel that she was free to leave the scene. She felt like “If I would have made any movements, they might have possibly been placed in handcuffs.”

Throughout the incident, including during her initial search, § 87(2)(b) continued to request that the officers’ “Show [her] some ID.” None of the officers provided § 87(2)(b) with their names or any explanation for why she was being stopped. § 87(2)(b) explained that she requested this information from the initial three officers at the scene more than three times. Approximately 10 minutes into the stop, a marked van containing Officers Jenica Nathaniel and Sean Finnegan of the 75th Precinct arrived at the scene. Officer Nathaniel asked § 87(2)(b) to “Come downstairs” while she put her leather gloves on. § 87(2)(b) asked Officer Nathaniel, “Are you going to search me in front of all these men?” Officer Nathaniel replied, “Don’t worry, I won’t show any skin.” § 87(2)(b) walked down the stairs and extended her hands outwards. Officer Nathaniel pulled § 87(2)(b)’s sweater and shirt up to expose her waistline, and then patted down § 87(2)(b)’s jacket and sweatshirt pockets, before frisking over § 87(2)(b)’s jeans pockets. When she felt over the pocket where § 87(2)(b) had her loose money, § 87(2)(b) told Officer Nathaniel “I have money in that pocket.” Officer Nathaniel responded, “I’m taking your money out” before reaching inside of the front jean pocket and removing the money and placing it in § 87(2)(b)’s hand. She then frisked over § 87(2)(b)’s buttocks. After the frisk, § 87(2)(b) asked Officer Nathaniel for her badge number and believed that Officer Nathaniel replied, “2401” Before walking back towards the marked van.

At this point, § 87(2)(b) arrived in front of his house and § 87(2)(b) informed § 87(2)(b) that she had been stopped and searched. She asked § 87(2)(b) to go upstairs and retrieve her identification. She also asked § 87(2)(b) to retrieve a pen and piece of paper so she could write down the officers’ badge numbers. When § 87(2)(b) returned, he was unable to locate § 87(2)(b)’s identification from within her bag, so he brought the entire bag outside. She told the three plain clothes officers once again, “I want your badge numbers.” This request “fell on deaf ears”, and none of the officers provided her with badge numbers. § 87(2)(b) again requested the officers’ badge numbers, and Sergeant Martin took the pen and paper and wrote something down on the paper which appeared to be “75th Precinct SNEU unit stopped.” [Enc. 9JJ] § 87(2)(b) turned around and noticed that § 87(2)(b) had retrieved the wrong bag. § 87(2)(b) asked the officers if she could go up herself into the building to retrieve identification, which the officers permitted. When she returned outside, the officers had left the scene, and only § 87(2)(b) and § 87(2)(b) remained outside. The entire interaction lasted approximately 30 minutes.

Photo Array [Enc. 9E-HH]

On July 19, 2010, the investigator conducted a photo array in front of § 87(2)(b) in Brooklyn. The array contained single photographs of all the members of the 75th Precinct’s SNEU team (13) as well as filler officers (17) chosen for their resemblance to the potential subject officers. § 87(2)(b) was unable to pick any officer out of the array.

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male who stands 5’11” and weighs 270 pounds. He has black hair and brown eyes.

On April 8, 2010, § 87(2)(b) was interviewed at the CCRB [Enc. 11A-E]. § 87(2)(b) somewhat corroborated § 87(2)(b)’s account of the incident, however, based on § 87(2)(b)’s statement about when § 87(2)(b) arrived at the scene, it is unclear the extent of the incident he witnessed. § 87(2)(b) arrived in front his residence at approximately 9:00pm, when he got out of the car which he parked on the street nearby, he glanced across the street and noticed his girlfriend, § 87(2)(b) and his tenant, § 87(2)(b) speaking with three plainclothes officers on the front stoop who appeared to arrive in an unmarked black vehicle. § 87(2)(b) approached the group, and asked “What’s going on?” § 87(2)(b) noticed the officers appearing to be looking around in the front yard. Sergeant Martin had entered into the gated area, the other two

officers remained outside on the sidewalk. § 87(2)(b) was only able to provide a detailed description of Sergeant Martin (black male, approximately 5'9", 30-40 years old), whom he had the most substantive interactions with. Once he reached the front of his house, he observed Sergeant Martin frisking § 87(2)(b). § 87(2)(b) was standing three feet away from the two when the frisk occurred. He stated that Sergeant Cotton had patted § 87(2)(b) down, and he also reached his hands inside of § 87(2)(b)'s exterior coat pockets. § 87(2)(b) was verbally protesting the officers' actions stating "You're violating my rights! Why are you searching me?"

§ 87(2)(b) continued to address the officers by saying "What's going on?" At first, the officers gave § 87(2)(b) a haphazard answer, telling him that § 87(2)(b) was "smoking in the yard" or otherwise indicating that they had stopped § 87(2)(b) under the suspicion that she was using drugs. The officers told § 87(2)(b) "She needs ID." § 87(2)(b) asked, "She needs ID to sit on the stoop?" § 87(2)(b) continued to ask why § 87(2)(b) had been stopped, but the officers continued to reply with curt and unsubstantial answers. § 87(2)(b) remained seated on the stoop waiting for the officers. After approximately ten minutes, a marked van arrived. § 87(2)(b) also indicated that he witnessed Officer Nathaniel arrive and frisk and search § 87(2)(b). He explained that at the conclusion of her second frisk, § 87(2)(b) and § 87(2)(b) repeatedly and specifically asked for all of the plainclothes officers and Officer Nathaniel to provide their names and badge numbers. Officer Nathaniel was the only officer to reply, only dismissively stating, "Oh, were going to give you that information" while walking back to the marked van and subsequently leaving the scene. At one point, Sergeant Martin wrote something down on an envelope § 87(2)(b) had been holding and handed it back to her. While § 87(2)(b) went into the house to retrieve her identification, § 87(2)(b) tried to walk out into the street to obtain the license plate number of the vehicle, but he wasn't able to get the number. The officers left the scene before § 87(2)(b) returned.

Witness: § 87(2)(b)

On October 27, 2010, § 87(2)(b) was contacted by phone and she provided a detailed phone statement which was consistent with § 87(2)(b)'s account of the incident [Enc. 12]. She indicated that she witnessed Sergeant Martin search § 87(2)(b)'s pockets during the incident and later observed Officer Nathaniel arrive at the scene and conduct a full body frisk and search of § 87(2)(b). She explained that the officers seemed only concerned with § 87(2)(b) and she had little interaction with them beyond requesting an explanation for their conduct and receiving dismissive responses to mind her own business. § 87(2)(b) speculated that this was the case since § 87(2)(b) extinguished and flicked the cigarette she had been smoking shortly before the officers arrived. At the conclusion of her phone statement, § 87(2)(b) stated that she would be unable to schedule an appointment at the CCRB due to her work schedule. The investigator had additional correspondence with § 87(2)(b) in an attempt to obtain a formal statement about the incident. However, on November 8, 2010, § 87(2)(b) informed the investigator that her work schedule as a delivery truck driver was too demanding for her to appear at the CCRB during normal business hours.

NYPD Statements:

Subject Officer: SERGEANT DAMON MARTIN, 75th PRECINCT

- *Sergeant Martin is a § 87(2)(b)*
- *On March 24, 2010, Sergeant Martin worked from 4:00pm to 12:00am and was assigned to supervise a SNEU unit (working in the observation vehicle). He was dressed in plainclothes, and was working with Officer Just and Officer Barreto, inside of an unmarked blue Crown Victoria RMP (# 202).*

Memo Book [Enc. 13A-B]

Sergeant Martin had no entries pertaining to this incident.

CCRB Statement [Enc. 14A-C]

On January 5, 2011, Sergeant Martin was interviewed at the CCRB. On March 24, 2010, at approximately 9:00pm, Sergeant Martin was inside of his SNEU unit's observation vehicle traveling southbound between set-up locations on Wyona Street between Blake Avenue and Dumont Avenue. Sergeant Martin could not recall where he was seated in the vehicle, but he explained that he was not operating the vehicle. When they drove close to the vicinity of § 87(2)(b) the officers observed from within the vehicle a civilian, identified as § 87(2)(b) seated on the stoop and appearing to be smoking marijuana. § 87(2)(b) appeared to be holding a blunt (or marijuana rolled inside of brown cigar paper) in her right hand while she sat on her stoop alone. The vehicle had been roughly adjacent to § 87(2)(b) and Sergeant Martin made this observation from the curb to where § 87(2)(b) was seated on her stoop.

In response, the officers stopped the vehicle to investigate. When the officers stopped and exited their vehicle to approach § 87(2)(b) she immediately flicked what she was smoking towards the side of a stoop near a bush and some trashcans adjacent to where she was sitting. Sergeant Martin believed that § 87(2)(b) realized that they were police officers only after they got out of the car since the unmarked vehicle has the appearance of a livery cab and provides the officers with an element of surprise. Outside of the vehicle, Sergeant Martin immediately detected the heavy odor of marijuana which appeared to be emanating from the area where § 87(2)(b) was seated. There were other civilians on the block, but they were further down the block and it was clear that the odor was coming from the stoop area where § 87(2)(b) was sitting. Sergeant Martin could not recall if any other civilians were present on the stoop at the time of the stop, but believed § 87(2)(b) had been alone. He recalled vaguely that one the neighbors may have looked out the window during the stop, but was not present during the initial stop. The officers took out their flashlights and began to shine them around the area where § 87(2)(b) appeared to throw what she was smoking. Sergeant Martin asked § 87(2)(b) what she was smoking, and § 87(2)(b) replied that she had simply been smoking a cigarette. Sergeant Martin was skeptical explaining, "You could tell it wasn't a cigarette. A cigarette doesn't smell like marijuana."

The officers continued to investigate what § 87(2)(b) had thrown by searching the front stoop and trash area with their flashlights. Sergeant Martin did not see any pack of cigarettes on the stoop or any extinguished cigarette butts on the ground or in the area they were searching. The officers conducted a thorough search of the area but did not recover any marijuana cigarettes. Meanwhile, Sergeant Martin continued to speak with § 87(2)(b) who was standing and complaining about the stop saying that she was in poor health. While speaking to him, § 87(2)(b) "kept moving around" and she repeatedly put her hands inside of her pockets. Sergeant Martin could not recall which pockets § 87(2)(b) was reaching for, and could not recall what § 87(2)(b) was wearing and therefore which garment pockets she was reaching into. Sergeant Martin asked § 87(2)(b) "You don't have anything on you, anything else, any weapons?" § 87(2)(b) replied, "I don't have any weapons." Sergeant Martin said, "Are you sure?" § 87(2)(b) again replied "No." Sergeant Martin did not come into physical contact with § 87(2)(b) and did not take any preventive action to prevent § 87(2)(b) from reaching into her pockets. Beyond observing her reach for her pockets, Sergeant Martin did not observe anything on § 87(2)(b)'s person that was indicative of weapons possession. She did not behave in any additional manner that indicated she may be in possession of a weapon. Sergeant Martin denied reaching into § 87(2)(b)'s outer garments or pockets during the incident, citing her gender. Sergeant Martin acknowledged in certain emergency situations it would be permissible to search a female but reaffirmed that he did not search § 87(2)(b) during the incident.

To "make sure that § 87(2)(b) didn't have any weapons, Sergeant Martin called Officer Nathaniel (the only female officer who had been working SNEU on that date) to the scene to check and make sure that § 87(2)(b) did not possess any weapons. He elaborated that she continued to "fidget around" and blade her body away from the officers even after Sergeant Martin requested that she keep her hands away from her pocket numerous times. At one point, § 87(2)(b) stated, "I don't have anything. You can search me." Sergeant Martin estimated that it took Officer Nathaniel approximately five minutes to arrive at the location as her unit had been in the immediate vicinity of the stop. Sergeant Martin stated that based on the information he had when he called Officer Nathaniel to the scene, he did not have probable cause to search her for contraband, only for weapons. Sergeant Martin stated that he had not determined to arrest § 87(2)(b) when he called

Officer Nathaniel to the scene, although he later stated that he “technically” could have arrested § 87(2)(b) without recovering marijuana, but he eventually opted not to.

Sergeant Martin could not recall § 87(2)(b) asking him to identify himself during the incident. He stated that his badge was displayed around his neck and he would have provided his name and badge number if she requested that information. Sergeant Martin did not remember hearing § 87(2)(b) requesting this information from any other officer at the scene. Sergeant Martin was shown the piece of paper provided by § 87(2)(b) and stated that it was not his handwriting and he did not remember ever writing that information on a sheet of paper at the conclusion of the incident. Sergeant Martin explained that a heavy-set male, identified as § 87(2)(b) arrived at the scene at one point. § 87(2)(b) had little role in the incident and primarily had just stood by idly and watched the situation unfold. He later said that § 87(2)(b) was “talking” during the incident but he could not recall what he was saying. Sergeant Martin did not recall § 87(2)(b) requesting identifying information during the incident.

Officer Nathaniel arrived at the scene and conducted a frisk and determined that § 87(2)(b) was not in possession of a weapon. Sergeant Martin did not watch Officer Nathaniel’s interaction with § 87(2)(b) and therefore he did not know whether Officer Nathaniel searched § 87(2)(b). Towards the conclusion of the incident, Sergeant Martin asked § 87(2)(b) if she could produce her identification. § 87(2)(b) replied that she had to retrieve her identification from the apartment upstairs and went inside, apparently to retrieve it. The officers waited for § 87(2)(b) for approximately five minutes before leaving when she did not return. Sergeant Martin instructed one of his officers to complete a UF-250 stop-and-frisk report, although he could not recall which officer he instructed. He explained that when he gives a command he expects it to be completed, but he was unsure if a UF-250 stop-and-frisk report had been completed as a result of the stop.

Subject Officer: OFFICER DANIEL BARETTO, 75th PRECINCT

- *Officer Daniel Barreto is a § 87(2)(b)*
- *On March 24, 2010, Officer Barreto worked from 4:00pm to 12:35am and was assigned to the observation vehicle of the SNEU team. He was dressed in plainclothes, and was working with Sergeant Martin and Officer Just inside of an unmarked blue Crown Victoria (RMP #202).*

Memo Book [Enc. 15A-B]

Officer Barreto had no memo book entries pertaining to this incident.

CCRB Statement [Enc. 16A-C]

On December 23, 2010, Officer Barreto was interviewed at the CCRB. Officer Barreto’s account of the incident was not completely consistent with the testimony provided by Sergeant Martin. Officer Barreto also explained that they had observed § 87(2)(b) sitting alone holding a lit marijuana cigarette in public, although he stated that § 87(2)(b) was holding a “joint” or marijuana rolled in white cigarette rolling paper. He referenced similar spatial proximity to Sergeant Martin when making this observation. When asked how he could determine that § 87(2)(b) was smoking a marijuana cigarette and not a regular cigarette, Officer Barreto referenced his SNEU training and the approximately 200 marijuana arrests he has made during his tenure with the NYPD. He also indicated that § 87(2)(b) flicked the cigarette to the side when she observed the officers exit the vehicle and that he immediately detected the strong odor of marijuana after exiting the vehicle.

Officer Barreto provided a different explanation for why § 87(2)(b) was searched, explaining that the officers had probable cause to search her person since they observed her with what appeared to be a marijuana cigarette and smelled the heavy odor of marijuana emanating from her vicinity.

Officer Barreto had a slightly better recollection of interacting with § 87(2)(b) whom he explained arrived later in the incident and attempted to defend § 87(2)(b) explaining that she does not smoke marijuana. Officer Barreto did not hear § 87(2)(b) or § 87(2)(b) request any officer to

provide their name and shield while present at the scene. He denied providing any information on a sheet of paper and stated that he has “no idea” how § 87(2)(b) obtained the sheet of paper which read “75th Precinct SNEU unit stopped.”

Subject Officer: OFFICER SCOTT JUST, 75th PRECINCT

- *Officer Just is a § 87(2)(b)*
- *On March 24, 2010, Officer Just worked from 3:00pm to 11:35pm and was assigned to the observation vehicle of the SNEU unit. He was dressed in plainclothes, and working with Sergeant Martin and Officer Barreto, assigned to an unmarked blue Crown Victoria (#202).*

Memo Book [Enc. 17A-B]

Officer Just had no memo book entries pertaining to this incident.

CCRB Statement [Enc. 18A-B]

On January 6, 2011, Officer Just was interviewed at the CCRB. Officer Just’s testimony mirrored the statement provided by Sergeant Martin. He indicated that he observed § 87(2)(b) smoking a “blunt,” which he described as marijuana rolled in cigar paper, that she flicked upon observing the officers. Upon approaching § 87(2)(b) he detected the strong odor of marijuana emanating from around her. He denied observing any male officer coming into physical contact with § 87(2)(b) during the incident. Like Sergeant Martin and Officer Barreto, Officer Just could not recall hearing any civilian request that he identify himself or provide his name and badge number during the incident. He also denied writing “75th Precinct SNEU team stopped” on the piece of paper and did not know how that information was disseminated there.

Subject Officer: OFFICER JENICA NATHANIEL, 75th PRECINCT

- *Officer Nathaniel is a § 87(2)(b)*
- *On March 24, 2010, Officer Nathaniel worked from 4:00pm to 11:35pm and she was assigned to the prisoner van. She was dressed in uniform and working with Officer Finnegan.*

Memo Book [Enc. 19A-B]

Officer Nathaniel had no memo book entries pertaining to this incident.

CCRB Statement [Enc. 20A-B]

On October 22, 2010, Officer Nathaniel was interviewed at the CCRB. Officer Nathaniel had no substantive recollection of the incident. She was shown a photograph of § 87(2)(b) and § 87(2)(b) and she stated that she did not recognize the civilians. Although she acknowledged in certain situations she would be called to a particular location to search a female suspect without making an arrest, she could not recall frisking or searching § 87(2)(b) on the incident date. She could not recall whether or not any civilian requested her name or badge number and she could not recall hearing individuals at the scene request anyone’s name or shield number during the incident.

Officers Interviewed but Not Summarized

Based on the lack of detail on the 75th Precinct roll call and § 87(2)(b)’s inability to pick any officer out of a photo array, the investigation had to interview numerous members of the SNEU team before determining the officers involved in this complaint. The following officers from the 75th Precinct were interviewed and later determined not to be involved in this incident: Sergeant Raymond Cotton [Enc. 21A-B, 22A-B], Officer Patrick Etienne [Enc. 23A-B, 24A-B], Officer Bryan Rothwell [Enc. 25A-c, 26A-B], Officer Ian Scheinblum [Enc. 27A-B, 28A-B], and Officer Jason Caputo [Enc. 29A-B, 30A-B], and Officer Joseph Fernandez [Enc. 31A-B].

Officer Not Interviewed

Since his statements would have no influence on the dispositions of the allegations in this case, Officer Sean Finnegan was not interviewed for the purposes of the investigation.

NYPD Documents

- The 75th Precinct tour 3 roll call [Enc. 32A-N], command log [Enc.35A-L], and daily vehicle assignment sheet [Enc. 34A-B] from March 24, 2010, are enclosed.
- The 75th Precinct's UF-250 log is enclosed [Enc. 33A-D]. There were no UF-250s completed for any of the civilians at the scene.

Other Evidence

- The envelope on which Sergeant Martin apparently wrote "75th Precinct SNEU unit stopped" is enclosed in the case file [Enc. 9JJ]. The envelope also contained a license plate number, apparently from one of the vehicle's at the scene. However, a DMV search indicated that the license plate number provided belonged to a 1984 Grey Datsun, a vehicle not registered to the NYPD [Enc. 40B]. Although there appears to be two distinct handwritings on the sheet of paper, the "75th Precinct SNEU unit stopped" is written in a manner that does not appear similar to handwriting samples gleaned from the memo books or officer pedigree sheets provided by any of the officers interviewed for this case.

Status of Civil Proceedings

- As of February 28, 2011, none of the civilians involved in this complaint has filed a Notice of Claim with the City of New York with regard to the incident [Enc. 40A].

Civilians Criminal History

- As of February 28, 2011, Office of Court Administration records reveal no criminal convictions for either § 87(2)(b) or § 87(2)(b) in the past 30 years.

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) [Enc. 5]. This is the first CCRB complaint involving § 87(2)(b) [Enc. 6].

Subject Officers CCRB History

- Sergeant Martin has been a member of service for 13 years and has 7 substantiated allegations against him [Enc. 1A-C]. In case 200613930, Sergeant Martin had two improper search allegations substantiated against him. The CCRB recommended that Sergeant Martin receive charges in regards. In June of 2010, Sergeant Martin was found not guilty during an administrative trial. In case 200616696, Sergeant Martin had an improper questioning allegation substantiated against him. The CCRB recommended a command discipline be issued in regards. In May of 2010, the NYPD declined to prosecute. In case 200814508, the CCRB substantiated an improper stop, retaliatory arrest, threat of force, and improper strip-search allegation against Sergeant Martin. The CCRB recommended that Sergeant Martin receive charges in regards. To date, the NYPD has not made a disciplinary determination based on the CCRB's recommendation.
- Officer Just has been a member of service for 20 years and has five CCRB allegations substantiated against him [Enc. 2A-C]. In case 9404245, Officer Just had an excessive force allegation substantiated by the CCRB. The CCRB declined to make a recommendation, and in June of 1998 the NYPD chose not to prosecute the case since the statute of limitations had expired. In case 9701500, Officer Just had three allegations, one for excessive force, one for an improper search, and another for an unspecified abuse of authority allegation substantiated by the CCRB. The board recommended that a command discipline be issued in regards. In August of 2001, Officer Just was found not guilty during an administrative trial. In case 9804412, Officer Just had an excessive force (punch) allegation substantiated against him. The CCRB

recommended that Officer Just receive charges in regards. In August of 2001, Officer Just was found not guilty during an administrative trial.

- Officer Nathaniel has been a member of service for 5 years and has one CCRB complaint substantiated against her [Enc. 3]. In case 200800184, the CCRB found that Officer Nathaniel conducted an improper frisk. In June of 2009, the NYPD declined to prosecute Officer Nathaniel as a result of the CCRB's findings.
- Officer Barreto has been a member of service for 4 years and there are no substantiated CCRB complaints against him [Enc. 4A-B].

Conclusion

Identification of Subject Officers

- Sergeant Martin, Officer Barreto, and Officer Just all acknowledged interacting with § 87(2)(b) during the incident. Although Officer Nathaniel did not recall the incident, Sergeant Martin indicated that she was called to the scene during the incident and she was the only female officer assigned to the SNEU team during the date and tour in question.
- § 87(2)(b) specified that upon approach, Sgt. Martin searched her pockets removing a pack of cigarettes and other items from her pockets; consequently, a search allegation is pleaded against Sergeant Martin. Given the discrepancy over why Officer Nathaniel was called to the scene, therefore Sergeant Martin stated that she was called to frisk § 87(2)(b) whereas Officer Barreto stated that she was called to search § 87(2)(b) since he claimed that the officers had probable cause to arrest § 87(2)(b). As the ranking officer on scene, Sergeant Martin was ultimately responsible for the officers' actions and so the alleged subsequent search by Officer Nathaniel will be subsumed into the search allegation already pleaded against Sergeant Martin. The authorization of § 87(2)(b)'s stop and frisk are also pleaded against Sergeant Martin.
- § 87(2)(b) and § 87(2)(b) specified that they request the names and badge numbers from all three plainclothes officers and Officer Nathaniel during the incident. As such, refusal to provide name and shield allegations will be plead against all four officers.

Investigative Findings and Recommendations

Allegation A) Sergeant Damon Martin authorized the stop of § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) Sergeant Martin and Officer Just explained that they saw § 87(2)(b) smoking a marijuana cigar (a "blunt") which has a brown appearance, while Officer Barreto explained that he observed § 87(2)(b) smoking a marijuana cigarette which has white appearance. The officers all indicated that they made this observation while they were roughly perpendicular to § 87(2)(b) from the edge of the sidewalk to the stoop she was sitting on. It is unclear why this discrepancy existed, although it is likely that the duration of time between the incident date and the officers' respective CCRB hearings had some effect on the accuracy of the officers' testimony.

§ 87(2)(b) and § 87(2)(b) both stated that they were simply out on their stoop smoking cigarettes when Sergeant Martin's unit arrived. Interestingly, § 87(2)(b) appeared to omit another detail that is important to the analysis of the stop: § 87(2)(b) speculated that the officers were suspicious of § 87(2)(b)'s actions because she flicked her cigarette shortly before the officers arrived at the scene. § 87(2)(b) did not allude to this action in her statement, although it is undisputed considering § 87(2)(b)'s statements and her descriptions of how the officers were searching her stoop area with their flashlights. All of the officers testified to smelling a strong odor of marijuana after exiting their vehicle, which they stated furthered their suspicion that § 87(2)(b) had been smoking marijuana. § 87(2)(b) denied smoking marijuana or detecting the odor of marijuana, and in her testimony could not speculate any reason why the officers stopped her.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B) Sergeant Damon Martin searched § 87(2)(b)

Allegation C) Sergeant Damon Martin authorized the frisk of § 87(2)(b)

§ 87(2)(b) stated that Sergeant Martin reached into her pockets during their initial encounter and later called Officer Nathaniel to the scene to conduct a full frisk and search of her person. Sergeant Martin denied searching § 87(2)(b)'s pockets during the incident, and stated that he subsequently called Officer Nathaniel to the scene to frisk § 87(2)(b) for weapons § 87(2)(b), § 87(2)(g)

Indeed, if any of the officers truly believed § 87(2)(b) to be in possession of a weapon in her jacket pockets during the incident, it is likely he would have conducted an immediate cursory frisk of her pockets or taken some sort of additional preventive action (all officers denied coming into physical contact with § 87(2)(b) citing her gender) to preserve their safety before Officer Nathaniel arrived at the scene. Based on the circumstances of the incident, it is highly likely that Officer Nathaniel was called to the scene to search § 87(2)(b) for contraband. § 87(2)(b), § 87(2)(g)

As discussed in *People v. Soviero* 5 A.D.3d 404 (2004), the mere observation of an individual smoking marijuana on the street, absent of other factors, could provide probable cause for an arrest, and therefore a search [Enc. VII]. § 87(2)(b), § 87(2)(g)

Allegation D) Sergeant Damon Martin refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)

Allegation E) Officer Daniel Barreto refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)

Allegation F) Officer Scott Just refused to provide his name and shield number to § 87(2)(b) and § 87(2)(b)

Allegation G) Officer Jenica Nathaniel refused to provide her name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that she asked the officers to “Show her some ID” numerous times throughout the incident and also explicitly requested names and badge numbers from the police officers during the incident. She stated that before they left the scene, she handed Sergeant Martin an envelope on which he appeared to write “75th Precinct SNEU unit stopped.” She also stated that she asked Officer Nathaniel to provide her badge number, and she believed she replied “2401” (a number which does not coincide with her actual badge number).

§ 87(2)(b) alleged that when he arrived at the scene, he also asked all of the plainclothes officers and Officer Nathaniel for their names and badge numbers, and only received a dismissive response. All of the officers interviewed could not recall any civilian requesting to obtain their name or badge number in anyway. None of the officers could recall writing down any information on the envelope provided by § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date